

**IN THE HIGH COURT OF FIJI**  
**WESTERN DIVISION**  
**CIVIL JURISDICTION**

Civil Action No. 169 of 2021

**BETWEEN**           : **HOME FINANCE COMPANY LIMITED**, registered office at 371 Victoria Parade, Suva

**PLAINTIFF**

**AND**                 : **RONAL RAKESH AND aka RONALD RAKESH NAND** of Simla, Lautoka

**DEFENDANT**

Appearances       : Mr. Roopesh Singh for the Plaintiff  
                          Mr. D. S. Naidu for the Defendant

Date of Hearing     : 29 November 2022

Date of Ruling     : 30 May 2023

**R U L I N G**

1. What is before me now is a Notice of Motion by the defendant, Ronal Rakesh Nand (“**Nand**”) filed on 13 October 2022. The said Motion was filed *ex-parte*. However, without hearing it, I directed that the application be served on the plaintiff as I would rather deal with the matter *inter-partes*. By the said Motion, Nand seeks that I recuse myself from presiding in the substantive matter in this case and that the matter be transferred to another Judge for adjudication.
2. Nand supports his application by a five-paragraph affidavit he swore on 13 October 2022. In paragraphs 3 to 5 (reproduced below) of the said affidavit, Nand sets out the facts which are the basis of his application.
  3. ..the current presiding Judge in this matter has presided over Civil Action No. 153 of 2021 whereby I was Defendant with same facts being disputed that is pleaded in the current matter
  4. ..the Learned Judge has already witnessed my demeanor. That there is an apprehension of bias in this matter. I have my constitutional right to have my matter tried before an impartial court without the fear of being prejudiced.
  5. Accordingly, I seek order in terms of my application.
3. In an affidavit in reply sworn by Vandana Sharma on 03 November 2022, she sets out two key points which I agree with and which form the basis of the decision which I am inclined towards in this application.
4. Having said that, I do note Mr. Naidu’s submission that Sharma is an interested party as she is an officer in HFCL – which was the beneficiary of my decision (“the apprehended bias”) alleged in

HBC 153 of 2021. In my view, Mr. Singh could have highlighted the very same two key points without having to file or refer to the affidavit of Vandana Sharma.

5. The two key points highlighted by Sharma are as follows. Firstly, the facts in Civil Action No. 153 of 2021 are not the same as the facts in this current case. HBC 153 of 2021 was about the enforcement of a General Lien which Nand had given to Home Finance Company Limited (“**HFCL**”). This action HBC 169 of 2021 is about defamation. Secondly, that there was never any occasion in HBC 153 of 2021 where I was required to witness - let alone assess and be influenced by - Nand’s demeanor because that matter was litigated and determined purely on affidavit evidence.
6. Sharma concludes that Nand’s application is purely an abuse of process.
7. For the record, my decision in HBC 153 of 2021 is being appealed by Nand to the Fiji Court of Appeal. One of the grounds of appeal is that I was biased in my decision in that matter.
8. I am somewhat concerned that if I were to recuse myself from this matter (HBC 169 of 2021) – I would be lending support to that ground of appeal which is already before the Fiji Court of Appeal. I accept Mr. Singh’s submissions on this point.
9. I start by saying that a Judge presiding over any case has a duty to be impartial (**sections 1, 15(2), 16(1) (c) and 97(4) of the 2013 Constitution**).
10. Hence, when a Judge takes office, he or she must take an oath of office which includes *inter alia* a promise to apply the Constitution and the law and administer justice impartially without fear, favour or prejudice.
11. Accordingly, there is every expectation in the democratic society of Fiji that a Judge will carry out his or her oath of office to the fullest and that he or she will be able to clear and set straight his or her mind of irrelevant factors which might cloud his or her judgement – in any given case. This is important in the interest of a “*fair trial*”, for there can be no fair trial if a Judge is impartial.
12. That societal expectation finds expression in the provisions and in the core values of the 2013 Constitution which I mention above. Flowing from that, the law must presume that a Judge who has taken the judicial oath, will be impartial in any matter placed before him or her.
13. As Poonan JA of the Supreme Court of Appeal of South Africa said in **S v Le Grange** 2009 (2) SA 434 (SCA)<sup>1</sup> :

[21] It must never be forgotten that an impartial judge is a fundamental prerequisite for a fair trial. The integrity of the justice system is anchored in the impartiality of the judiciary. As a matter of policy it is important that the public should have confidence in the courts. Upon this social order and security depend. Fairness and impartiality must be both subjectively present and objectively demonstrated to the informed and reasonable observer. Impartiality can be described – perhaps somewhat inexactly – as a state of mind in which the adjudicator is disinterested in the outcome, and is open to persuasion by the evidence and submissions. In contrast, bias denotes a state of mind that is in some way predisposed to a particular result, or

that is closed with regard to particular issues. Bias in the sense of judicial bias has been said to mean ‘a departure from the standard of even-handed justice which the law requires from those who occupy judicial office’. In common usage bias describes ‘a leaning, inclination, bent or predisposition towards one side or another or a particular result. In its application to legal proceedings, it represents a predisposition to decide an issue or cause in a certain way that does not leave the judicial mind perfectly open to conviction. Bias is a condition or state of mind which sways judgment and renders a judicial officer unable to exercise his or her functions impartially in a particular case.’

14. It follows *ipso facto* that the law must place a heavy burden on a party alleging impartiality or biasness against a particular Judge. That heavy burden is translated to the requirement that - a party alleging bias or impartiality - must produce cogent or convincing evidence (see **Amina Koya v State** Supreme Court of Fiji Criminal Appeal No. CAV 002/97; **Muir v CIR** [2007] NZCA 334 as cited by Mr. Singh in submissions).
15. As Lord Hope said in **Porter v Magill**:

"The question is whether a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased."
16. In this case, it appears to me that the applicant is concerned that the findings of fact I made in HBC 153 of 2021, and the manner in which I applied the law to those findings of fact – would compromise my impartiality in this case.
17. In my view, this is not cogent or convincing enough evidence to meet the rather heavy burden on the applicant. A litigant who has had a Judge rule against him or her in another matter should not be able to complain of bias or impartiality in a separate matter. Otherwise, it would legitimize every expectation by a disgruntled litigant to go forum shopping and have their case either heard by another judicial officer of their preference – or taken away from a judicial officer who is not of their liking.
18. I accept that a judge must recuse himself or herself in any case where he or she has an interest, or, where the judge has uttered words while presiding over a case - and where the interest or the words uttered are likely to raise an apprehension of bias in the mind of the reasonable observer.
19. However, I am also mindful that a Judge who yields too easily to a recusal application for which no cogent or convincing evidence is raised – may actually be inflicting injury to the administration of justice.
20. In **Locabail (UK) Ltd v Bayfield Properties Ltd** [2022] 2 WLR 870 (cited in **Chief Registrar v Iqbal Khan** CBV 0011 (22 April 2016) (cited by Mr. Singh in his submissions), the court said *inter alia* at [25]:

The mere fact that a judge, earlier in the same case or in a previous case, had commented adversely on a party or witness, or found the evidence of a party or witness to be unreliable, would not without more, found a sustainable objection...”

21. I am of the view that the application lacks cogent or convincing evidence. Accordingly, I dismiss the application. Case adjourned to Friday 02 June 2023 for directions.



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Anare Tuilevuka  
**JUDGE**  
30 May 2023

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<sup>1</sup> <http://www.saflii.org/za/cases/ZASCA/2008/102.html>